



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Patricia Olivares, M.D.

Respondent Name

Texas Mutual Insurance Company

MFDR Tracking Number

M4-16-2372-01

Carrier's Austin Representative

Box Number 54

MFDR Date Received

April 11, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Based on the Texas Labor Code and DWC Rules governing Post Designated Doctor Examinations/Alternative Certifications there is no requirement for the provider to be part of the carrier's workers compensation network or for pre-authorization to be obtained. In fact, it would be a conflict of interest for the provider to be part of the carrier's workers compensation network in providing an opinion in dispute of the Designated Doctor's opinion on behalf of the injured employee. Additionally, a Post Designated Doctor Examination is not medical treatment and is considered a part of the medical services as adopted in the Medical Fee Guidelines for Workers Compensation Specific Services."

Amount in Dispute: \$1,350.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The requestor, selected by the treating doctor to determine MMI/IR, and additional IR, and extent of injury exams, billed Texas Mutual 99456-W5/WP, 99456-W5/MI, and 99456-W6/RE. Texas Mutual declined to issue payment because modifier W5 is reserved for designated doctor billing and modifier W6 is to be used only when conducting Division or insurance carrier requested RTW/EMC examination.

No payment is due for incorrect coding."

Response Submitted by: Texas Mutual Insurance Company

DISPUTED SERVICES SUMMARY

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 12, 2015	Referral Doctor Examination to Determine Maximum Medical Improvement, Impairment Rating, and Extent of Injury	\$1,350.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. Texas Insurance Code Chapter 1305 governs the procedures for Certified Health Care Networks.

Issue

1. Did the requestor receive an out-of-network referral from the injured employee's treating doctor that has been approved by the network pursuant to Texas Insurance Code §1305.103?
2. Does the requestor meet the exceptions in Texas Insurance Code §1305.101?
3. Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

Findings

The requestor filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307. Texas Mutual Insurance Company, on its Explanation of Benefits dated December 10, 2015, denied the services in part with claim adjustment reason code 727 – "PROVIDER NOT APPROVED TO TREAT TEXAS STAR NETWORK CLAIMANT." The authority of the Division of Workers' Compensation is to apply Texas Labor Code statutes and rules, including 28 TAC §133.307, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305. In particular, TIC §1305.153(c) provides that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

1. Texas Insurance Code §1305.006(3) states that an insurance carrier that establishes or contracts with a network is liable for "health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103."

The requestor therefore has the burden to prove that the condition(s) outlined in the Texas Insurance Code §1305.006 were met in order to be eligible for dispute resolution. Texas Insurance Code §1305.103 requires that

- (e) A treating doctor shall provide health care to the employee for the employee's compensable injury and shall make referrals to other network providers, or request referrals to out-of-network providers if medically necessary services are not available within the network. Referrals to out-of-network providers must be approved by the network. The network shall approve a referral to an out-of-network provider not later than the seventh day after the date on which the referral is requested, or sooner if circumstances and the condition of the employee require expedited approval. If the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I.

The requestor has the burden to prove that it obtained the appropriate approved out-of-network referral for the out-of-network healthcare it provided. Review of the submitted documentation does not find a referral was from the treating doctor and approved by the network to treat the injured employee. The Division concludes that the requestor has therefore failed to meet the requirements of Texas Insurance Code §1305.103.

2. Texas Insurance Code §1305.101 states,
 - (a) Except for emergencies and out-of-network referrals, a network shall provide or arrange for health care services only through providers or provider groups that are under contract with or are employed by the network.
 - (b) A network doctor may not serve as a designated doctor or perform a required medical examination, as those terms are used under the Texas Workers' Compensation Act, for an

employee receiving medical care through a network with which the doctor contracts or is employed.

Review of the submitted documentation finds that the requestor does not meet the requirements of exception found in Texas Insurance Code §1305.101.

3. The Division finds that the requestor failed to prove in this case that the requirements of Texas Insurance Code §1305.006(3) or the exceptions of Texas Insurance Code §1305.101 were met. Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307.

DECISION

Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

Authorized Signature

_____ Signature	Laurie Garnes _____ Medical Fee Dispute Resolution Officer	February 14, 2017 _____ Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division, within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form, or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).